

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Nhat Phan,	)	No. CV-11-2259-PHX-NVW (LOA)
	)	
Petitioner,	)	<b>REPORT AND RECOMMENDATION</b>
	)	
vs.	)	
	)	
Katrina S. Kane,	)	
	)	
Respondent.	)	

On November 17, 2011, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, doc. 1, asserting that his continued detention by the Department of Homeland Security (“DHS”) is unlawful. Petitioner seeks either removal or release from custody on an order of supervision. On January 30, 2012, Respondent filed a Notice of Mootness asserting that this matter is moot because Petitioner has been released from custody on an order of supervision. (Doc. 12) Petitioner has not replied.

**I. Background**

Petitioner is a native and citizen of Vietnam. (Doc. 1 at 11) Petitioner entered the United States on October 26, 2001 at Los Angeles as a lawful permanent resident. (Doc. 1 at 13) On September 23, 2008, Petitioner was convicted in the State of California for Commercial Burglary and Identity Theft and was sentenced to two years imprisonment. (*Id.*) On June 3, 2011, the Department of Homeland Security (“DHS”) commenced removal proceedings against Petitioner. Petitioner was ordered removed to Vietnam. (*Id.*)



1       Thereafter, Petitioner filed a Petition for Writ of Habeas Corpus with this Court  
2 asserting that his continued detention is unlawful. Petitioner seeks immediate release  
3 from custody.

## 4 **II. Analysis**

5       As previously stated, Petitioner seeks release from custody on the ground that his  
6 continued detention by DHS is unlawful. (Doc. 1) After filing his Petition, on or about  
7 January 3, 2012, Petitioner was released from custody under an order of supervision.  
8 (Doc. 12 at 4) Indeed, on January 13, 2012, the Court received returned mail addressed to  
9 Petitioner marked “undeliverable, not in custody.” (Doc. 10) Petitioner has not notified  
10 the Court of his current address. Because Petitioner has been released from custody on an  
11 order of supervision, he has been awarded the relief he was seeking in his § 2241 petition.

12       “Article III of the Constitution limits federal ‘Judicial Power,’ that is, federal-court  
13 jurisdiction, to ‘Cases’ and ‘Controversies.’” *U.S. Parole Commission v. Geraghty*, 445  
14 U.S. 388, 395 (1980); *see also PUC v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996). An  
15 actual case or controversy must exist at all stages of judicial review. *Ortez v. Chandler*,  
16 845 F.2d 573, 574-575 (5th Cir. 1988) (holding that no case or controversy existed where  
17 movant, who challenged his bond determination, had been deported because the relief he  
18 requested — reduction of his bond — could no longer be effected.) This limitation  
19 restricts the jurisdiction of the federal courts to cases where there is a possible judicial  
20 resolution. *Geraghty*, 445 U.S. at 395. This Court lacks jurisdiction to review moot  
21 issues. *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1128-29 (9th Cir. 2005)  
22 (stating that “[i]t is an inexorable command of the United States Constitution that the  
23 federal courts confine themselves to deciding actual cases and controversies.”). A moot  
24 action is not subject to a judicial resolution. An action is moot when the parties lack a  
25 legally cognizable interest in the outcome. *Sample v. Johnson*, 771 F.2d 1335, 1338 (9th  
26 Cir. 1985).

27  
28       Here, Petitioner challenges his detention by DHS and seeks either removal “or



1 release . . . on an order of supervision.” (Doc. 1 at 9) In view of Petitioner’s release from  
 2 custody on an order of supervision, the relief he requests — “release . . . on or order of  
 3 supervision” — can no longer be effected. (Doc. 1 at 9) Therefore, no “case or  
 4 controversy” remains and the Petition is moot. *Picrin-Peron v. Rison*, 930 F.2d 773, 776  
 5 (9th Cir. 1991) (finding that because petitioner only requested release from custody and  
 6 had been released, the court could provide no further relief and the petition was properly  
 7 dismissed.); *American Rivers v. National Marine Fisheries Services*, 126 F.3d 1118, 1123  
 8 (9th Cir. 1997) (stating that “[a] claim is moot if it has lost its character as a present, live  
 9 controversy.”) (citation omitted); *Xie v. Schiltgen*, No. C 99-4150 VRW, 2001 WL  
 10 637409, \* 1 (N.D. Cal. May 24, 2001) (finding petition for writ of habeas corpus under  
 11 28 U.S.C. § 2241 moot where petitioner has been released from INS custody after posting  
 12 bond). *But see Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010) (noting, in dictum, that  
 13 habeas petitioner’s release from detention did not render moot his claims for injunctive  
 14 and declaratory relief. Rather, a controversy existed because petitioner retained a  
 15 personal stake in determination of claims on behalf of himself and class of aliens detained  
 16 during immigration proceedings for more than six months without bond hearing, because  
 17 petitioner’s release pursuant to 8 C.F.R. § 241.4 was subject to restrictions and to  
 18 discretionary revocation without hearing before neutral decision-maker and without  
 19 burden of justification on government.).

20  
 21 Alternatively, this matter is subject to dismissal based on Petitioner’s failure to  
 22 notify the Court of his current address. *See* Fed.R.Civ.P. 41(b); LRCiv 83.3(d).

23 In view of the foregoing,

24 **IT IS RECOMMENDED** Petitioner’s Petition for Writ of Habeas Corpus (Doc.  
 25 1) be **DENIED** as moot.

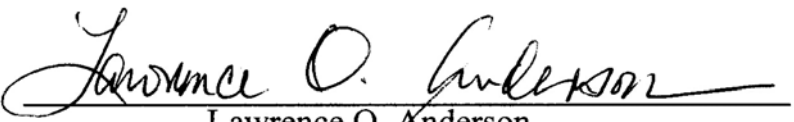
26 **IT IS FURTHER RECOMMENDED**, in the alternative, that the Petition be  
 27 dismissed based on Petitioner’s failure to comply with Court orders pursuant to  
 28 Fed.R.Civ.P. 41(b).



1           **IT IS FURTHER RECOMMENDED** that a Certificate of Appealability and  
2 leave to proceed *in forma pauperis* on appeal be **DENIED**.

3           This recommendation is not an order that is immediately appealable to the Ninth  
4 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of  
5 Appellate Procedure, should not be filed until entry of the District Court's judgment. The  
6 parties shall have fourteen days from the date of service of a copy of this recommendation  
7 within which to file specific written objections with the Court. *See* 28 U.S.C. §  
8 636(b)(1); Rules 72, 6(a), 6(e), Federal Rules of Civil Procedure. Thereafter, the parties  
9 have fourteen days within which to file a response to the objections. Failure timely to file  
10 objections to the Magistrate Judge's Report and Recommendation may result in the  
11 acceptance of the Report and Recommendation by the District Court without further  
12 review. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Failure  
13 timely to file objections to any factual determinations of the Magistrate Judge will be  
14 considered a waiver of a party's right to appellate review of the findings of fact in an  
15 order or judgment entered pursuant to the Magistrate Judge's recommendation. *See* Rule  
16 72, Federal Rules of Civil Procedure.

17           DATED this 5th day of March, 2012.

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21           Lawrence O. Anderson  
22           United States Magistrate Judge  
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